

**MAHLER
DECLARATION**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE ASSOCIATION OF AMERICAN :
UNIVERSITY PRESSES, INC.; THE :
PROFESSIONAL/SCHOLARLY PUBLISHING :
DIVISION OF THE ASSOCIATION OF :
AMERICAN PUBLISHERS, INC.; :
PEN AMERICAN CENTER, INC.; and :
ARCADE PUBLISHING, INC., :
:

Plaintiffs, :

- against - :

THE OFFICE OF FOREIGN ASSETS :
CONTROL OF THE DEPARTMENT OF THE :
TREASURY; JOHN W. SNOW, SECRETARY :
OF THE TREASURY, in his official capacity; :
and R. RICHARD NEWCOMB, DIRECTOR, :
OFFICE OF FOREIGN ASSETS CONTROL, :
in his official capacity, :
:

Defendants. :
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**DECLARATION OF
SCOTT MAHLER**

Pursuant to 28 U.S.C. § 1746, I, Scott Mahler, hereby declare under penalty of perjury that the following is true, to the best of my information and belief:

1. I have been a book editor and writer for more than fifteen years. I make this declaration in support of the application of the plaintiffs in this action for declaratory and injunctive relief from regulations of the Office of Foreign Assets Control ("OFAC") of the United States Department of the Treasury that restrict and, in some cases, prohibit the publication of works from certain countries subject to United States trade sanctions, including Cuba, Iran and Sudan (the "OFAC Information Regulations").

2. While working as a Senior Editor for the Smithsonian Institution Press, I felt compelled to cancel plans for publishing a book I acquired, because of the OFAC Information Regulations.

The Smithsonian Institution Press

3. The Smithsonian Institution Press is the principal book publisher of the Smithsonian Institution. It publishes approximately 50-60 new scholarly and general interest books each year. Some of its authors work for the Smithsonian Institution, but many do not. The Press sells its books through the usual scholarly and trade book channels, including independent bookstores, chain stores and online booksellers.

4. As a non-profit publisher, the Smithsonian Institution Press does not focus exclusively on publishing books that will generate a high volume of sales or large profits. Although it often aims to publish for a broad audience and generate significant revenue through book sales, the Press was founded principally to support the Smithsonian Institution's overall scientific, cultural, and educational mission: to contribute to the increase and diffusion of knowledge.

5. The Smithsonian Institution Press publishes books in a variety of areas, including anthropology, archaeology, history, life sciences and military and aviation history. Many of its books inform American readers about the unfamiliar cultures of other peoples and places.

6. I was the Senior Editor of the Smithsonian Institution Press for five years. I left in June 2004 and joined another nonprofit publisher.

7. As Senior Editor, I was responsible for creating and identifying promising book projects for the Smithsonian Institution Press and developing them into high-quality publications that would inform and engage readers interested in various cultural traditions and achievements throughout the world and also in the life sciences. During my five years at the Smithsonian Institution Press, I was responsible for developing or publishing approximately 75 books.

The Publishing Project

8. In late 2003, the Editorial Board of the Smithsonian Institution Press unanimously and enthusiastically approved publication of a translation of a work about the architecture of Havana by deceased Cuban writer Alejo Carpentier, provided we could obtain appropriate photographs to illustrate the book.

9. Alejo Carpentier is considered one of the major Latin American writers of twentieth-century. He was a novelist, essayist, musicologist, journalist, cultural promoter, radio personality and diplomat. Carpentier studied architecture in Havana, and he wrote passionately and imaginatively about architecture in his novels and essays.

10. His book about Havana, *La ciudad de las columnas* ("The City of Columns"), describes and reflects on the unique architecture of the city and the cultural influences and meanings of architecture through the ages. It has never been published in English.

11. The idea of publishing *The City of Columns* in English was suggested to me by Alexia Lalli, the Executive Director of Urbanists International, not least of all because of increasing international interest in the architectural restoration of Old Havana, especially in anticipation of political change in Cuba.

12. The upcoming centennial of Carpentier's birth (in 2004) made the prospect of publishing *The City of Columns* in English all the more attractive because it gave the Press an opportunity to promote and sell the book at the many conferences, celebrations and other events scheduled to honor the Cuban writer in the United States and elsewhere.

13. We decided to illustrate our new edition of *The City of Columns* with photographs by leading American and Cuban photographers and to publish the text in both English and Spanish to make the work accessible to the widest possible audience.

14. Esther Allen agreed to translate the text. Ms. Allen has translated many influential books from Spanish and French into English, including works by the nineteenth-century Cuban philosopher, patriot and poet José Martí and *The Selected Non-Fiction of Jorge Luis Borges*, which won the 1999 National Critics Circle Award for Criticism. She has received Fulbright and National Endowment for the Arts grants and is the Chair of the Translation Committee of PEN American Center.

15. Ms. Allen prepared a translation of the text of *The City of Columns* equal in literary value to the original work in Spanish.

16. Three prominent American photographers agreed to contribute photographs of architecture in Havana for the book: Andrew Moore, Andrea Brizzi and Robert Polidori. All had previously published photographs of Cuban architecture in books of their own work.

17. Three Cuban photographers also agreed to contribute photographs: Lisette Solisano, Jose Figueroa and Julio Laramendi.

18. The American architect James Stewart Polshek agreed to contribute a preface for the book. Mr. Polshek is the founder of the Polshek Partnership, a 150-person firm that is best known for its work on the preservation and renovation of performing arts centers such as Carnegie Hall and Symphony Space in New York and the Santa Fe Opera; museums such as the new Rose Center for Earth and Space at the American Museum of Natural History; and academic buildings, libraries, institutions, laboratories and office buildings around the world. His preface offers his own reflections on architectural history in general and on Havana's architecture in particular.

19. The Cuban cultural figure Graziella Pogollotti, who knew Carpentier, agreed to provide an introductory essay to draw connections between Carpentier, his work, and the

architecture of Havana as seen in the photos in the new book.

20. By February 2004, the preface, introduction and translated text were complete, and the selection of photographs to accompany the text had begun. The book was nearly ready for final approval, editing and design.

The Decision Not to Publish

21. In February 2004, I learned of the OFAC Information Regulations, which prohibit the substantive or artistic alteration or enhancement of works by writers in Cuba and several other countries and which prohibit the publication in the U.S. of new works by authors in those countries.

22. Our edition of *The City of Columns* altered and enhanced the Spanish-language original in several ways: it recreated the work in English through a sensitive and artistic translation; it added an informative introduction; it offered a preface by a leading American architect; and it illustrated the text with new photographs by contemporary photographers which are works of art in themselves.

23. Publishing any part of the new book without the others would have significantly diminished the book, jeopardized its acceptance for publication by the Press, and considerably reduced the potential public interest in it.

24. The Smithsonian Institution Press had, further, planned to promote and publicize the book, as it promotes most of its books, through its catalog, press releases, direct sales presentations to bookstores, and special events, including events planned to coincide with the Carpentier centennial in the United States. The OFAC Information Regulations, however, prohibit promoting or advertising works by Cuban authors.

25. It was clear that the book could not be published without violating the OFAC Information Regulations.

26. The Smithsonian Institution Press therefore did not proceed as planned toward the publication of the book.

27. I informed Ms. Lalli and Ms. Allen that the Press was no longer in a position to advance further in the normal publication process and that they were free to offer the book to another publisher..

Applying for Permission to Publish

28. I have been informed that publishers may apply to OFAC for permission to publish individual works by Cuban, Iranian or Sudanese writers, but I do not believe the Smithsonian Institution Press or any other publisher should be required to seek permission to publish a book.

29. In any event, applying for permission would have imposed a burden on the Smithsonian Institution Press and, since no one could predict how long OFAC might take to rule on a request for permission, would have caused a delay of unpredictable length in the publishing process. I have been informed that some applicants have had to wait more than a year for a response to their request for permission. Not knowing when a book can be published prevents publishers from developing timely and effective promotion and marketing plans.

30. Moreover, there was no reason to believe OFAC would have granted us permission to publish our edition of *The City of Columns*. In September 2003, OFAC had written to another publisher, "you may not publish books in the United States on behalf of a person in Iran," noting specifically that advertising and promotion, which are prohibited, are inherent in the publication of a book and that adding illustrations would substantively or

artistically enhance the manuscript, which is also prohibited.

31. With respect to the edition of *The City of Columns* described here, the OFAC Information Regulations prevented the Smithsonian Institution Press from fulfilling its responsibility to educate and inform the citizens of the United States.

32. Because of increasing public interest in Cuba in this country, I had been developing a publishing program for the Smithsonian Institution Press that featured books related to Cuba, which would naturally include contributions from Cuban scholars, artists and literary figures. I left the Smithsonian Institution Press shortly after OFAC's rulings made it clear that such books could not be published without significant legal risk.

33. As of the date of this declaration, no other publisher has decided to publish *The City of Columns*.

Dated: September 21, 2004


Scott Mahler